

**PATENT****Application # 10/002,277****Attorney Docket # 1999-0707 (1014-151)****REMARKS**

The Examiner is respectfully thanked for the thoughtful consideration provided to this application. Reconsideration of this application is respectfully requested in light of the foregoing amendments and the following remarks.

Each of claims 1, 11, and 22 has been amended for reasons unrelated to patentability, including at least one of: to explicitly present one or more elements implicit in the claim as originally written when viewed in light of the specification thereby not narrowing the scope of the claim, to detect infringement more easily, to enlarge the scope of infringement, to cover different kinds of infringement (direct, indirect, contributory, induced, and/or importation, etc.), to expedite the issuance of a claim of particular current licensing interest, to target the claim to a party currently interested in licensing certain embodiments, to enlarge the royalty base of the claim, to cover a particular product or person in the marketplace, and/or to target the claim to a particular industry.

Claims 1-31 are now pending in this application. Each of claims 1, 11, and 22 are in independent form.

**The Anticipation Rejections**

Each of claims 1-4, 7-15, and 18-21 were rejected as anticipated under 35 U.S.C. 102(e). In support of the rejection, Vaid (U.S. Patent No. 6,078,953) was cited. These rejections are respectfully traversed.

Vaid fails to establish a prima facie case of anticipation. *See* MPEP 2131. To anticipate expressly, the "invention must have been known to the art in the detail of the claim; that is, all of the elements and limitations of the claim must be shown in a single prior art reference, arranged as in the claim". *Karsten Mfg. Corp. v. Cleveland Golf Co.*, 242 F.3d 1376, 1383, 58 USPQ2d 1286, 1291 (Fed. Cir. 2001). The single reference must describe the claimed subject matter "with sufficient clarity and detail to establish that the subject matter existed in the prior art and that its existence was recognized by persons of ordinary skill in the field of the invention". *Crown Operations Int'l, LTD v. Solutia Inc.*, 289 F.3d 1367, 1375, 62 USPQ2d 1917, 1921 (Fed.

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Cir. 2002). Moreover, the prior art reference must be sufficient to enable one with ordinary skill in the art to practice the claimed invention. *In re Borst*, 345 F.2d 851, 855, 145 USPQ 554, 557 (C.C.P.A. 1965), *cert. denied*, 382 U.S. 973 (1966); *Amgen, Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1354, 65 USPQ2d 1385, 1416 (Fed. Cir. 2003) ("A claimed invention cannot be anticipated by a prior art reference if the allegedly anticipatory disclosures cited as prior art are not enabled.")

Specifically, each of claims 1 and 11, from one of which each of claims 2-10 and 12-21 depends, recites "monitoring data traffic over the network via a device not directly connected to a first local area network of a traffic source, the device not directly connected to a second local area network, wherein the data traffic includes at least one of data and voice traffic, determining a traffic level of at least one site of the network, wherein the second local area network comprises the at least one site."

Vaid allegedly recites the "method includes a step of providing a network of computers, each being coupled to each other to form a local area network." See Abstract. Thus, Vaid does not teach expressly or inherently "monitoring data traffic over the network via a device not directly connected to a first local area network of a traffic source, the device not directly connected to a second local area network, wherein the data traffic includes at least one of data and voice traffic, determining a traffic level of at least one site of the network, wherein the second local area network comprises the at least one site."

Accordingly, it is respectfully submitted that the rejection of claims 1 and 11 is unsupported by Vaid and should be withdrawn. Also, the rejection of claims 2-10 and 12-21, each ultimately depending from one of independent claims 1 or 11, is unsupported by Vaid and also should be withdrawn.

**The Obviousness Rejections**

Each of claims 5, 6, 16, 17, and 22-31 were rejected under 35 U.S.C. 103(a) as being unpatentable over various combinations of Vaid (U.S. Patent No. 6,078,953), Muret (U.S. Patent No. 6,792,458), and Sweet (U.S. Patent No. 6,836,800). These rejections are respectfully traversed.

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None of the cited references, either alone or in any combination, establish a *prima facie* case of obviousness. "To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure." See MPEP 2143.

As stated above, Vaid allegedly recites the "method includes a step of providing a **network of computers, each being coupled to each other to form a local area network.**" See Abstract. Muret allegedly illustrates a "**system 100 for monitoring and analyzing Internet traffic in accordance with the present invention**" (see, col. 3, lines 60-62) **directly connected to "web servers" 500 and 520.** See Fig. 1.

Each of independent claims 1 and 11 recite "**monitoring data traffic over the network via a device not directly connected to a first local area network of a traffic source, the device not directly connected to a second local area network, wherein the data traffic includes at least one of data and voice traffic, determining a traffic level of at least one site of the network, wherein the second local area network comprises the at least one site.**" Neither Vaid nor Muret expressly or inherently teach or recite "**monitoring data traffic over the network via a device not directly connected to a first local area network of a traffic source, the device not directly connected to a second local area network, wherein the data traffic includes at least one of data and voice traffic, determining a traffic level of at least one site of the network, wherein the second local area network comprises the at least one site.**" Sweet does not overcome the deficiencies of Vaid and Muret.

Independent claim 22, recites "**a controller, coupled to the network interface and the subscriber database, that monitors data traffic over the network, determines a traffic level of at least one site of the network, the controller not directly connected to a first local area network of a traffic source, the device not directly connected to a second local area network**

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comprising the at least one site, wherein the controller selectively displays traffic information to at least one subscriber based on the traffic level, wherein the data traffic includes at least one of data and voice traffic, wherein the subscriber is not directly connected to the first local area network, the second local area network, or the controller." Neither Vaid nor Muret expressly or inherently teach or recite "a controller, coupled to the network interface and the subscriber database, that monitors data traffic over the network, determines a traffic level of at least one site of the network, the controller not directly connected to a first local area network of a traffic source, the device not directly connected to a second local area network comprising the at least one site, wherein the controller selectively displays traffic information to at least one subscriber based on the traffic level, wherein the data traffic includes at least one of data and voice traffic, wherein the subscriber is not directly connected to the first local area network, the second local area network, or the controller." Sweet does not overcome the deficiencies of Vaid and Muret.

Thus, even if there were motivation or suggestion to modify or combine the cited references (an assumption with which the applicant disagrees), and even if there were a reasonable expectation of success in combining or modify the cited references (another assumption with which the applicant disagrees), the cited references still do not expressly or inherently teach or suggest every limitation of the independent claims, and consequently fail to establish a *prima facie* case of obviousness.

Because no *prima facie* rejection of any independent claim has been presented, no *prima facie* rejection of any dependent claim can be properly asserted. Consequently, reconsideration and withdrawal of these rejections is respectfully requested.

**Allowable Subject Matter**

The following is a statement of reasons for the indication of allowable subject matter:

"none of the references of record alone or in combination disclose or suggest the combination of limitations found in the independent claims. Namely,

claims 1-21 are allowable because none of the references of record alone or in combination disclose or suggest 'monitoring data traffic over the network via a device

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not directly connected to a first local area network of a traffic source, the device not directly connected to a second local area network, wherein the data traffic includes at least one of data and voice traffic; determining a traffic level of at least one site of the network, wherein the second local area network comprises the at least one site; and selectively displaying traffic information to a subscriber not directly connected to the first local area network, the second local area network, or the device, the traffic information based on the traffic level'; and

claims 22-31 are allowable because none of the references of record alone or in combination disclose or suggest 'monitoring data traffic to the one or more sites over the network via a device not directly connected to a first local area network of a traffic source, the device not directly connected to a second local area network, wherein the data traffic includes at least one of data and voice traffic; generating a traffic notification when an amount of data traffic to at least one or more of the sites on the network meets at least one predetermined threshold, wherein the second local area network comprises the at least one or more sites; and transmitting the traffic notification to the subscriber, the subscriber not directly connected to the first local area network, the second local area network, or the device.'"

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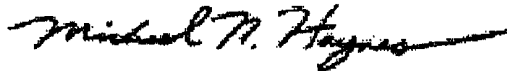
**CONCLUSION**

It is respectfully submitted that, in view of the foregoing amendments and remarks, the application as amended is in clear condition for allowance. Reconsideration, withdrawal of all grounds of rejection, and issuance of a Notice of Allowance are earnestly solicited.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. 1.16 or 1.17 to Deposit Account No. 50-2504. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

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